
HOUSE BILL 1890

State of Washington

69th Legislature

2025 Regular Session

By Representatives Graham, Chase, Walsh, and Schmidt

Read first time 02/07/25. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to the establishment of liability standards for
2 prosecutors; amending RCW 4.92.070, 4.92.075, and 4.96.041; adding a
3 new chapter to Title 7 RCW; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) Any person injured by an individual
6 who was previously arrested for a violent offense, and subsequently
7 released from custody before trial for such offense as a result of a
8 state prosecutor declining to file reasonable criminal charges
9 against the individual, has a cause of action against such prosecutor
10 if: (a) The individual caused the injury after being released from
11 custody; and (b) the prosecutor failed to adequately consider the
12 risk of public harm that could result from failing to bring
13 reasonable criminal charges against the individual.

14 (2) For the purposes of this section, "violent offense" has the
15 same meaning as defined in RCW 9.94A.030.

16 (3) For the purposes of this section, "state prosecutor" means
17 all prosecuting attorneys as that term is defined in RCW 36.27.005,
18 and all deputy prosecuting attorneys and special deputy prosecuting
19 attorneys as provided for in RCW 36.27.040.

20 (4) For the purposes of this section, adequate consideration
21 requires:

1 (a) A written and published assessment that analyzes:

2 (i) All known evidence about the individual's alleged violent
3 offense, criminal record, and risk of engaging in further violence;

4 (ii) The vulnerability of anyone the individual has previously
5 victimized or is likely to victimize in the future; and

6 (iii) The adequacy of alternatives to reasonable criminal
7 prosecution for mitigating the risk the individual may cause harm to
8 others if he or she is not prosecuted; and

9 (b) Consideration of all relevant and reasonably available
10 evidence, including public records, and the testimony of law
11 enforcement officials and experts and crime victims and crime victim
12 advocates.

13 (5) For the purposes of this section, whether the criminal
14 charges filed were reasonable is a question of fact and requires
15 consideration of the totality of the circumstances known to the state
16 prosecutor who made the charging decision.

17 (6) No form of prosecutorial immunity may be raised as an
18 immunity or defense to any action brought under this section,
19 including without limitation any immunity or defense premised on the
20 argument that a prosecutor has absolute immunity from liability when
21 acting within the scope of their duties in initiating and pursuing a
22 criminal prosecution, or that immunity is warranted or necessary to
23 protect the prosecutor's role as an advocate or the administration of
24 justice.

25 (7) In an action brought under this section, the court shall
26 award to a prevailing plaintiff actual damages as determined by the
27 trier of fact, and shall make an award of at least nominal damages.
28 The court may also award to a prevailing plaintiff costs and
29 reasonable attorneys' fees. The court may grant declaratory and
30 injunctive relief as it deems appropriate.

31 (8) (a) Except as provided in (b) of this subsection, nothing in
32 this section is intended to limit the right of an elected or
33 appointed official to have a legal defense provided at the expense of
34 the state or a political subdivision of the state, or to have any
35 judgment under this section satisfied by the state or a political
36 subdivision of the state under chapter 4.92 or 4.96 RCW.

37 (b) Whenever a claim is brought under this section, if the trier
38 of fact finds by clear and convincing evidence that the defendant
39 intentionally, knowingly, or recklessly disregarded the risk of

1 public harm when the defendant declined to file reasonable criminal
2 charges, then:

3 (i) The defendant shall be personally liable for all costs of
4 defense and judgment;

5 (ii) The state and any political subdivision of the state must
6 not pay any of the defendant's subsequent costs of defense or
7 judgment; and

8 (iii) Any costs of defense the state or any political subdivision
9 of the state has previously paid must be repaid by the defendant
10 within one year of entry of judgment.

11 (9) A cause of action under this section must be commenced within
12 three years after the cause of action accrues. For the purpose of
13 this section, a cause of action accrues when the plaintiff discovers,
14 or in the reasonable exercise of diligence should discover, the
15 elements of the cause of action.

16 (10) This section must be liberally construed to effect its
17 beneficial and remedial purposes.

18 (11) Nothing in this section affects any other common law or
19 statutory right of action available to a plaintiff.

20 (12) This section applies only to causes of action arising on or
21 after the effective date of this section.

22 **Sec. 2.** RCW 4.92.070 and 1999 c 163 s 5 are each amended to read
23 as follows:

24 (~~(1F)~~) Except as provided in section 1(8) of this act, if the
25 attorney general shall find that said officer, employee, or
26 volunteer's acts or omissions were, or were purported to be in good
27 faith, within the scope of that person's official duties, or, in the
28 case of a foster parent, that the occurrence arose from the good
29 faith provision of foster care services, said request shall be
30 granted, in which event the necessary expenses of the defense of said
31 action or proceeding relating to a state officer, employee, or
32 volunteer shall be paid as provided in RCW 4.92.130. In the case of a
33 foster parent, necessary expenses of the defense shall be paid from
34 the appropriations made for the support of the department to which
35 such foster parent is attached. In such cases the attorney general
36 shall appear and defend such officer, employee, volunteer, or foster
37 parent, who shall assist and cooperate in the defense of such suit.
38 However, the attorney general may not represent or provide private
39 representation for a foster parent in an action or proceeding brought

1 by the department of social and health services against that foster
2 parent.

3 **Sec. 3.** RCW 4.92.075 and 1989 c 413 s 2 are each amended to read
4 as follows:

5 (~~When~~) Except as provided in section 1(8) of this act, when a
6 state officer, employee, or volunteer has been represented by the
7 attorney general pursuant to RCW 4.92.070, and the body presiding
8 over the action or proceeding has found that the officer, employee,
9 or volunteer was acting within the scope of his or her official
10 duties, and a judgment has been entered against the officer,
11 employee, or volunteer pursuant to chapter 4.92 RCW or 42 U.S.C. Sec.
12 1981 et seq., thereafter the judgment creditor shall seek
13 satisfaction only from the state, and the judgment shall not become a
14 lien upon any property of such officer, employee, or volunteer.

15 **Sec. 4.** RCW 4.96.041 and 1993 c 449 s 4 are each amended to read
16 as follows:

17 (1) Whenever an action or proceeding for damages is brought
18 against any past or present officer, employee, or volunteer of a
19 local governmental entity of this state, arising from acts or
20 omissions while performing or in good faith purporting to perform his
21 or her official duties, such officer, employee, or volunteer may
22 request the local governmental entity to authorize the defense of the
23 action or proceeding at the expense of the local governmental entity.

24 (2) If the legislative authority of the local governmental
25 entity, or the local governmental entity using a procedure created by
26 ordinance or resolution, finds that the acts or omissions of the
27 officer, employee, or volunteer were, or in good faith purported to
28 be, within the scope of his or her official duties, the request shall
29 be granted. (~~If~~) Except as provided in section 1(8) of this act, if

30 the request is granted, the necessary expenses of defending the
31 action or proceeding shall be paid by the local governmental entity.
32 (~~Any~~) Except as provided in section 1(8) of this act, any monetary
33 judgment against the officer, employee, or volunteer shall be paid on
34 approval of the legislative authority of the local governmental
35 entity or by a procedure for approval created by ordinance or
36 resolution.

37 (3) The necessary expenses of defending an elective officer of
38 the local governmental entity in a judicial hearing to determine the

1 sufficiency of a recall charge as provided in RCW ((29.82.023))
2 29A.56.140 shall be paid by the local governmental entity if the
3 officer requests such defense and approval is granted by both the
4 legislative authority of the local governmental entity and the
5 attorney representing the local governmental entity. The expenses
6 paid by the local governmental entity may include costs associated
7 with an appeal of the decision rendered by the superior court
8 concerning the sufficiency of the recall charge.

9 (4) ((When)) Except as provided in section 1(8) of this act, when
10 an officer, employee, or volunteer of the local governmental entity
11 has been represented at the expense of the local governmental entity
12 under subsection (1) of this section and the court hearing the action
13 has found that the officer, employee, or volunteer was acting within
14 the scope of his or her official duties, and a judgment has been
15 entered against the officer, employee, or volunteer under chapter
16 4.96 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment
17 creditor shall seek satisfaction for nonpunitive damages only from
18 the local governmental entity, and judgment for nonpunitive damages
19 shall not become a lien upon any property of such officer, employee,
20 or volunteer. The legislative authority of a local governmental
21 entity may, pursuant to a procedure created by ordinance or
22 resolution, agree to pay an award for punitive damages.

23 NEW SECTION. Sec. 5. Section 1 of this act constitutes a new
24 chapter in Title 7 RCW.

25 NEW SECTION. Sec. 6. This act takes effect January 1, 2026.

26 NEW SECTION. Sec. 7. If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

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